

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

LLOYD JOSEPH,

Plaintiff,

v.

CIGNA INSURANCE CO. and
CIGNA INSURANCE COMPANY OF
PUERTO RICO,

Defendants

CIVIL NO. 1998/0176

TO: Lee J. Rohn, Esq.
Wilfredo A. Geigel, Esq.

ORDER FOR CONFERENCE BETWEEN ATTORNEYS

THIS MATTER is before the Court upon Defendants' Motion to Compel Admissions or to Have Admissions Deemed Admitted (Docket No. 140). In the initial paragraph of said Motion, Defendants state: "On August 23, 2004[,] Plaintiff's counsel was invited to meet and confer regarding the denials and objections, (See **Exhibit "H"**) [sic] but the motion [sic] was ignored by Plaintiff." Motion at 1 (bold in original). Defendants' Exhibit H is a one(1)-page letter, dated August 23, 2004, from Defendants' counsel to Plaintiff's counsel regarding the Requests For Admissions at issue. The final two (2) sentences read, "If you still have objections or maintain the denial [sic], we invite you to meet and confer in an effort to elucidate the refusal to admit to those requests. For that purpose, I invite you to meet on August 27, 2004." Motion, Ex. H.

Apparently, Plaintiff's counsel did not respond to said correspondence, prompting the filing of Defendants' said Motion on October 5, 2004.

Local Rule of Civil Procedure 37.1 provides, in relevant part:

No motion relative to discovery shall be accepted for filing unless accompanied by a certificate of counsel for the moving party, stating that counsel have met and conferred for purposes of amicably resolving issues and stating why they are unable to agree or stating that opposing counsel has refused to so meet and confer after reasonable notice. Counsel for the moving party shall arrange the conference. If the court finds that opposing counsel has willfully refused to meet and confer or, having met, willfully refused or failed to confer in good faith, the court may impose such sanctions as it deems proper.

LRCi 37.1. The Court surmises that the correspondence attached as Exhibit H is offered as proof of Defendants' compliance with the above-referenced rule. The Court finds that, as such, it is wholly inadequate. Correspondence requesting a "meet and confer" on a specific date four (4) days from the date of the correspondence does not coincide with any concept of "reasonable notice." Even if the said letter was transmitted by facsimile, which is not apparent, offering only one date only four (4) days from the date of the letter, when time is not an issue (this matter has been pending for six years), does not constitute "reasonable notice" on any level. Moreover, Plaintiff's counsel's non-response to Defendants' request may not be interpreted as an outright refusal. As the rule states, "Counsel for the moving party shall arrange the

conference." In this particular instance, a follow-up telephone call or correspondence and an offering of alternate dates to meet, at the very least, were required.

Because the Court finds that counsel have not met and conferred as required by LRCi 37.1, nor was such an attempt even made, the Court will strike Defendants Motion to Compel at this time and order Defendants' counsel to arrange a conference to discuss Defendants' Requests For Admissions which are the subject of Defendants' said Motion. Any failure or refusal by opposing counsel to so meet and confer will result in appropriate sanctions, including, but not necessarily limited to, deeming the requests for admissions admitted. If, after such conference, the parties still are unable to reach agreement with regard to any of the disputed discovery requests, Defendants may re-file their motion, detailing the results of the conference of counsel.

Accordingly, it is now hereby **ORDERED**:

1. Defendants' Motion to Compel Admissions or to Have Admissions Deemed Admitted (Docket No. 140) is **STRICKEN**.
2. Counsel **shall** meet and confer, at time and place mutually convenient, on or before **Friday, October 29, 2004**.
3. If, after such conference, any dispute regarding any or all of the discovery requests at issue remains, Defendants may re-file their motion to compel, with a

proper LRCi 37.1 certification and including the details
of such conference of counsel.

4. Any failure or refusal to meet and confer or to meet and
confer in good faith shall result in sanctions.

ENTER:

Dated: October 6, 2004

_____/s/_____
GEORGE W. CANNON, JR.
U.S. MAGISTRATE JUDGE

ATTEST:
WILFREDO F. MORALES
Clerk of Court

By: _____
Deputy Clerk